

REMARKS

The Office Action rejects claims 17-22, 24-29, 32-40, and 42-50 under 35 U.S.C. § 103(a) as being unpatentable over Helmly, Jr. et al. (U.S. Patent No. 4,605,081) by itself. Additionally, the Office Action rejects claims 23 and 31 under 35 U.S.C. § 103(a) as being unpatentable over Helmly in view of Schlessinger (U.S. Patent No. 7,136,787).

Applicant thanks the Examiner for the courtesy extended in the telephone interview with Applicant's undersigned representative on Thursday, September 2, 2010. In the telephone interview, Applicant's representative explained Applicant's position that the Office Action does not establish a *prima facie* case of obviousness of the pending claims for at least the reasons discussed in detail below. Additionally, the Examiner indicated during the interview that a recent change in Patent Office examination guidelines would require him to advance a new rejection under 35 U.S.C. § 101 of claims 17-29, 31, 32, 38-40, and 42-48.

While Applicant submits that claims 17-29, 31, 32, 38-40, and 42-48 fully comply with the provisions of § 101, Applicant has amended these claims in accordance with recommendations from the Examiner to obviate the anticipated rejection under § 101. Additionally, Applicant has amended independent claim 40 to recite "generating as a result of the analysis, a second target payload based on the payload weight data, the second target payload being different from the first target payload and corresponding with compliance with the payload standard when achieved throughout a remainder of the calendar time period." Applicant respectfully submits the originally filed application and drawings fully support the amendments to the claims. No new matter has been added. Claims 17-29, 31-40, and 42-50 are currently pending.

Rejection of Independent Claims 17, 33, 38, 40, and 49 Under § 103(a)

Applicant respectfully submits the Office Action does not establish a *prima facie* case of obviousness of independent claims 17, 33, 38, 40, and 49. A reference that teaches away from a claimed combination generally cannot support a *prima facie* case of obviousness of that claimed combination. McGinley v. Franklin Sports, Inc., 262 F.3d 1339, 1354 (Fed. Cir. 2001), citing In re Gurley, 27 F.3d 551, 553 (Fed. Cir. 1994). If reading a reference would discourage a person of ordinary skill in the art from implementing the claimed invention, the reference teaches away from the claimed invention. Tec Air, Inc. v. Denso Mfg. Michigan Inc., 192 F.3d 1353, 1360 (Fed. Cir. 1999), citing In re Gurley, 27 F.3d 551, 553 (Fed. Cir. 1994).

Applicant respectfully submits that independent claims 17, 33, 38, 40, and 49 each recite features that Helmly teaches away from. For example, Claim 17 recites, *inter alia*, "determining a history of deviations of the recorded payload weight data from the target payload; and modifying the target payload for future hauling events based on the history of deviations such that an actual loading profile of the one or more pieces of equipment for the calendar period of time substantially complies with the payload standard" (emphasis added).

Helmly focuses on ensuring compliance with weight regulations and laws for trucks. See Col. 1, ll. 9-33 and 55-63; and col. 2, ll. 62-66. Accordingly, Helmly discloses using a scale and sensors to automatically determine the payload weight allowed for a truck by applicable weight laws and/or regulations. Col. 1, l. 64-col. 2, l. 8. With the legally allowed payload determined, Helmly discloses controlling loading of the truck with the legally allowed amount of payload. Col. 2, ll. 27-35. Thus, in Helmly, the

target payload for a given vehicle is the payload mandated by applicable laws and/or regulations.

Helmly does not teach or suggest "determining a history of deviations of the recorded payload weight data from the target payload" or "modifying the target payload for future hauling events based on the history of deviations such that an actual loading profile of the one or more pieces of equipment for the calendar period of time substantially complies with the payload standard." In attempt to address these deficiencies, the Office Action merely advances the unsupported, conclusory assertion that:

It would have been obvious to use the data for long term analyzing the payload as Helmly teaches the system as being used to comply with government regulations (abstract, lines 4-8) and if a particular place shows a pattern of placing a load that is above legal limits the company would be in danger of legal action taken against it, the period of time for analyzing compliance spans multiple different hauling events (it is used whenever the truck operates with a load).

Office Action at p. 3. Even if the Office Action could support this assertion, it does not address Helmly's failure to disclose "modifying the target payload for future hauling events based on the history of deviations such that an actual loading profile of the one or more pieces of equipment for the calendar period of time substantially complies with the payload standard" (emphasis added) as recited in claim 17. Regardless of whether it would have been obvious "to use the data for long term analyzing the payload," a person of ordinary skill in the art would not have found it obvious to modify Helmly's target payload from the legally mandated value based on a history of deviations such that an actual loading profile of the one or more pieces of equipment for the calendar period of time substantially complies with the payload standard. Complying with vehicular weight laws and/or regulations has nothing to do with deviations of prior loads

from the laws and/or regulations; every load must individually comply with the laws and/or regulations, without regard to the weights of prior loads.

Considering the Office Action's example of a history of overloads, under loading future loads is not necessary for legal compliance going forward and cannot bring the operator back into legal compliance with respect to past over loads. Understanding this, a person of ordinary skill in the art would have thought that modifying Helmly by planning to under load future loads would only waste available hauling capacity.

Similarly, a person of ordinary skill in the art would understand that a history of under loads does not afford an operator the opportunity to load a vehicle beyond legal weight limits. Accordingly, a person of ordinary skill in the art would understand that modifying Helmly's target payload to deviate from the legally mandated values would only undermine Helmly's primary goal of ensuring legal compliance. Thus, Helmly teaches away from "modifying the target payload for future hauling events based on the history of deviations," as reading Helmly would discourage a person of ordinary skill in the art from doing so.

For similar reasons, Helmly also teaches away from similar recitations in each of independent claims 33, 38, 40, and 49. Helmly teaches away from "a processing module, connected to the input module and programmed to . . . modify the target payload for future hauling events based on the history of deviations" as recited in claim 33. Helmly also teaches away from "providing a modified target payload weight for the piece of equipment that differs from a historical target payload weight" as recited in claim 38. Similarly, Helmly teaches away from "generating as a result of the analysis, a second target payload based on the payload weight data, the second target payload

being different from the first target payload” as recited in claim 40. Helmly also teaches away from “based on the analysis, provide a modified target payload weight for the piece of equipment that differs from a historical target payload weight” as recited in claim 49. Applicant respectfully submits that Helmly teaches away from these features of claims 33, 38, 40, and 49, for reasons similar to those discussed above that Helmly teaches away from the recitation in claim 17 of “modifying the target payload for future hauling events based on the history of deviations.”

Additionally, independent claim 38 recites “providing a modified target payload weight for the piece of equipment . . . that should ensure continued warranty coverage through a remainder of a calendar time duration of the payload standard” (emphasis added). Similarly, claim 49 recites “a processing module of the computer system connected to the input module and programmed to: . . . provide a modified target payload weight for the piece of equipment . . . that should ensure continued warranty coverage through a calendar time duration of the payload standard” (emphasis added). In attempt to address features like those of claim 38 related to warranty, the Office Action merely offers a cursory suggestion that a person of ordinary skill in the art would have found these features obvious, without citing any evidence or legal authority. See, e.g., Office Action at p. 5. Such conclusory arguments do not meet the requirements for establishing a *prima facie* case of obviousness. In order to establish a *prima facie* case of obviousness, the record must “include findings of fact concerning the state of the art and the teachings of the references” The Manual of Patent Examining Procedure (“M.P.E.P.”) § 2141(II) (8th ed., rev. 6, July 2008) (relying on KSR Int’l Co. v. Teleflex Inc., 127 S. Ct. 1727, 82 U.S.P.Q.2d (BNA) 1385 (2007), and confirming the legal

framework established by Graham v. John Deere Co., 383 U.S. 1, 17, 148 U.S.P.Q. 459, 467 (1966)). Moreover, “[o]nce the findings of fact are articulated, [the rejection statement] must provide an explanation to support an obviousness rejection under 35 U.S.C. [§] 103.” Id. If it is found that the prior art references fail to disclose all of the subject matter recited in a claim, the rejection statement “must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art.” M.P.E.P. § 2141(III).

For at least the foregoing reasons, Applicant respectfully submits that the Office Action does not establish a *prima facie* case of obviousness of independent claims 17, 33, 38, 40, and 49. Accordingly, Applicant respectfully requests withdrawal of the rejection of these claims under 35 U.S.C. § 103(a).

Rejection of Claim 43 Under 35 U.S.C. § 103(a)

Applicant respectfully submits that claim 43, which depends from claim 17, is patentable over the cited references for at least the above-discussed reasons claim 17 is patentable over the cited references. Additionally, claim 43 recites “wherein the recorded payload weight data for a number of the multiple different hauling events is less than the target payload, and modifying the target payload includes increasing the target payload for future hauling events” (emphasis added). Helmly fails to teach or suggest these claimed features, and the Office Action attempts address this deficiency by simply suggesting that a person of ordinary skill in the art would have found it obvious to modify Helmly’s system to operate in the claimed manner. See Office Action at p. 5.

This assertion of the Office Action flies directly in the face of Helmly's primary purpose of ensuring compliance with vehicular weight limit laws and/or regulations. As discussed above, the target payload in Helmly is the legally mandated maximum payload for each vehicle. Thus, by asserting that a person of ordinary skill in the art would have found it obvious to modify Helmly's system to include "increasing the target payload for future hauling events" (emphasis added), the Office Action suggests that a person of ordinary skill in the art would have found it obvious to plan to load a vehicle with a payload greater than the maximum allowed by law. A person of ordinary skill in the art would understand that planning to load a vehicle beyond legal limits directly contradicts Helmly's purpose of ensuring compliance with weight laws and regulations. Accordingly, Applicant respectfully submits that Helmly teaches away from the features recited in claim 43.

For at least the foregoing reasons, Applicant respectfully submits the Office Action fails to establish a *prima facie* case of obviousness of claim 43. Accordingly, Applicant respectfully requests withdrawal of the rejection of claim 43 under 35 U.S.C. § 103(a).

Rejections of Claims 18-29, 31, 32, 34-37, 39, 42, 44-48, and 50 Under § 103(a)

Each of claims 18-29, 31, 32, 34-37, 39, 42, 44-48, and 50 depends directly or indirectly from one of independent claims 17, 33, 38, 40, and 49. As explained above, the Office Action fails to establish a *prima facie* case of obviousness of independent claims 17, 33, 38, 40, and 49. Applicant respectfully submits that neither the assertions of the Office Action directed specifically toward depend claims 18-29, 31, 32, 34-37, 39, 42, 44-48, and 50 and the citation of Schlessinger in connection with the rejections of

dependent claims 23-31 fail to cure the deficiencies in the Office Action's rejections of independent claims 17, 33, 38, 40, and 49.

Additionally, dependent claims 18-29, 31, 32, 34-37, 39, 42, 44-48, and 50 recite many features not taught or suggested by the cited references. For example, claim 19 recites that the target payload is determined based on at least one of a slope of terrain or a type of terrain. Additionally, Claims 42-48 recite, among other things, that the payload weight data includes a payload weight and a time duration; that the recorded payload weight data for at least one of the multiple hauling events is less than the target payload, and modifying the target payload includes increasing the target payload for future hauling events; that the payload standard is associated with a loading profile agreed-upon by a warrantor and a responsible party of the one or more pieces of equipment; and that a warranty is affected based on compliance with the agreed-upon loading profile. In attempt to address these claimed features, the Office Action offers only conclusory assertions that a person of ordinary skill in the art would have found these obvious, citing no evidence or legal authority. Such unsupported, conclusory arguments do not meet the requirements for establishing a *prima facie* case of obviousness.

For at least the foregoing reasons, Applicant respectfully submits that the Office Action does not establish a *prima facie* case of obviousness of claims 18-29, 31, 32, 34-37, 39, 42, 44-48, and 50. Accordingly, Applicant respectfully requests withdrawal of the rejection of these claims under 35 U.S.C. § 103(a).

Conclusion

In view of the foregoing, Applicant respectfully requests reconsideration and reexamination of this application and the timely allowance of the pending claims.

The Office Action contains characterizations of the claims and the related art with which Applicants do not necessarily agree. Unless expressly noted otherwise, Applicant declines to subscribe to any statement or characterization in the Office Action.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

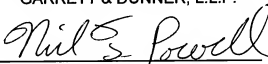
If the Examiner believes a telephone conversation might advance prosecution, the Examiner is invited to call Applicant's undersigned agent at 202-408-4492.

Respectfully submitted,

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Dated: September 9, 2010

By:



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